IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.8 OF 2007

Girdharlal Jhawar ..Petitioner

Vs.

Jt.Director General of Foreign Trade
and Others ..Respondents

Mr.D.H.Mehta with Mr.M.G.Mimani for the Petitioner.
Mr.A.S.Rao with Mr.Y.S.Bhate for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.
DATE : 19TH JANUARY,2007

P.C.

1. Heard the learned Counsel for the parties.

Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing.

2. By this Petition, the Petitioner is challenging the Order-in-Appeal dated 30th August,2006 passed by Respondent No.2 Additional Director General of Foreign Trade and Order-in-Original dated 21th November,2005 passed by Respondent No.1 Joint Director General of Foreign Trade. We have perused the said orders. The Order-in-Appeal proceeds mainly on the ground that the Appeal was barred by Limitation and accordingly, the Appeal appears to have been dismissed.

2. The learned Counsel for the Petitioner brought to our notice that the Petitioner could not produce the relevant original documents at the relevant time, as the same were misplaced by the Clearing Agent. However, the xerox copies of the same were duly filed even before the Joint Director General of Foreign Trade. As the original documents were not produced, the Joint Director General of Foreign Trade found the Petitioner to be guilty of contravening the provisions of section 11(2) of the Foreign Trade (Development & Regulation) Act,1992 read with Rule 13 and 14(1) & (2) of the Foreign Trade Regulation Rules, 1993 and imposed a fiscal penalty of Rs.65,00,000/- on the Firm and its partners for non-fulfilment of export obligation, duty exemption availed on excess imports and interest thereon.

3. Aggrieved thereby, the Petitioner had filed an Appeal before the Additional Director General of Foreign Trade, which was dismissed on 30th August,2006 on the ground that the Appeal was time barred.

4. The learned Counsel for the Petitioner produced all the original documents which were later on traced by the Clearing Agent, and also pointed out that all these documents were in fact could not traced by the Clearing Agent earlier and therefore, the Petitioner had tendered xerox copies of the same

before the Joint Director General of Foreign Trade along with letter dated 23rd January,2006, which is annexed as Exhibit-D to the Petition. It appears that no cognizance was taken with regard to the aforesaid xerox copies of the documents.

5. Having regard to the facts and circumstances of the case and in the larger interest of justice, specially in view of the fact that the original documents have now been traced, we are inclined to quash and set aside the Order-in-Original dated 21st November,2005 as well as the Order-in-Appeal dated 30th August,2006 and remand back the matter to the Joint Director General of Foreign Trade for a fresh hearing strictly on its own merits in accordance with law. The Joint Director General of Foreign Trade shall give a fresh notice to the Petitioner so as to enable him to appear in person and produce all the relevant original documents and justify his contentions. The Joint Director General of Foreign Trade shall expeditiously dispose of the matter.

6. Rule is accordingly made absolute.

(DR.S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)